No. 15-338

In the Supreme Court of the United States

MARK J. SHERIFF, ET AL., PETITIONERS

v.

PAMELA GILLIE, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENTS

MARY MCLEOD
General Counsel
TO-QUYEN TRUONG
Deputy General Counsel
JOHN R. COLEMAN
Assistant General Counsel
NANDAN M. JOSHI
LAWRENCE DEMILLE-WAGMAN
Counsel
Consumer Financial Protection Bureau
Washington, D.C. 20552

DONALD B. VERRILLI, JR.
Solicitor General
Counsel of Record
MALCOLM L. STEWART
Deputy Solicitor General
SARAH E. HARRINGTON
Assistant to the Solicitor General
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTIONS PRESENTED

1. Whether "special counsel" appointed by the Attorney General of Ohio to collect debts owed to the State are exempted from the definition of "debt collector" under the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. 1692 *et seq.*, because they are "officer[s]" of the State.

2. Whether special counsel's use of the Ohio Attorney General's letterhead on their communications to debtors violated the FDCPA.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases—Continued: Page

Statutes—Continued: Page

In the Supreme Court of the United States

No. 15-338

MARK J. SHERIFF, ET AL., PETITIONERS

v.

PAMELA GILLIE, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING RESPONDENTS

INTEREST OF THE UNITED STATES

The Fair Debt Collection Practices Act (FDCPA or Act), 15 U.S.C. 1692 *et seq.*, authorizes the Consumer Financial Protection Bureau (CFPB) to "prescribe rules with respect to the collection of debts by debt collectors, as defined in" the FDCPA. 15 U.S.C. 1692*l*(d). The CFPB and other federal regulatory agencies are responsible for enforcing the Act through administrative proceedings and civil litigation. 15 U.S.C. 1692*l*(a)-(c). In addition, private counsel who assist in collecting debts owed to the United States are subject to the Act's requirements. See 31 U.S.C. 3718(b)(1)(A) and (6). The United States therefore has a substantial interest in the Court's resolution of the questions presented.

STATEMENT

1. a. Congress enacted the FDCPA in 1977 based on "abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors." 15 U.S.C. 1692(a). Congress concluded that "[e]xisting laws * * * are inadequate to protect consumers," and that "the effective collection of debts" does not require "misrepresentation or other abusive debt collection practices." 15 U.S.C. 1692(b) and (c). The Act subjects debt collectors to various procedural and substantive requirements that are designed to "eliminate abusive debt collection practices by debt collectors" while "insur[ing] that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged." 15 U.S.C. 1692(e).

The FDCPA applies to any "debt collector," a term that the Act generally defines as "any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." 15 U.S.C. 1692a(6). The Act's definition of "debt collector" specifically excludes, *inter alia*, "any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor," 15 U.S.C. 1692a(6)(A), and "any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties," 15 U.S.C. 1692a(6)(C).

The FDCPA prohibits debt collectors from "us[ing] any false, deceptive, or misleading representation or means in connection with the collection of any debt."

15 U.S.C. 1692e. In addition to that general prohibition, Congress has identified 16 specific practices that violate Section 1692e. As relevant here, the prohibited practices include the "use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval," 15 U.S.C. 1692e(9), and the "use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization," 15 U.S.C. 1692e(14). The Act authorizes civil actions against "any debt collector who fails to comply with any provision of [the FDCPA] with respect to any person." 15 U.S.C. 1692k.

b. The Attorney General of Ohio is charged by state law with collecting debts owed to the State. Ohio Rev. Code Ann. § 131.02 (LexisNexis 2014). Ohio law authorizes the Attorney General to "appoint special counsel to represent the state in connection with all claims of whatsoever nature which are certified to the attorney general for collection under any law or which the attorney general is authorized to collect." *Id.* at § 109.08. Section 109.08 further provides that "[s]uch special counsel shall be paid for their services from funds collected by them in an amount approved by the attorney general." *Ibid.*

The statute directs the Ohio Attorney General to provide special counsel appointed to collect tax debts "the official letterhead stationery of the attorney general." Ohio Rev. Code Ann. § 109.08 (LexisNexis 2014). It also requires such counsel to "use the letterhead stationery, but only in connection with the collec-

tion of such claims arising out of those taxes." *Ibid.* Individuals hired by Ohio as special counsel have been orally directed by the Attorney General to use the letterhead of the Office of the Attorney General in connection with all collections. Pet. App. 24a.

To choose the individuals who will assist Ohio officials in collecting debts owed to the State, the Attorney General issues a "Request for Qualifications" for collections special counsel. Pet. App. 23a. Applicants selected as special counsel enter into a "Retention Agreement" with the Attorney General, *ibid.*; see J.A. 170-205, under which "Special Counsel and its employees" agree to "conduct any and all legal and collection work assigned by the Attorney General," and to "render [such] services * * * as an independent contractor," J.A. 171, 173.

2. In 2012, each respondent received a debt-collection letter signed by an individual who was or purported to be a special counsel hired by the Ohio Attorney General. See Pet. App. 25a-26a, 71a-76a.

The letter sent to respondent Pamela Gillie included letterhead from the Ohio Attorney General's office. Pet. App. 73a. The letterhead contained the Attorney General's name and title, as well as the official state seal. *Ibid.* The letter was signed by "Eric A. Jones, Outside Counsel for the Attorney General's Office," and contained a payment coupon listing the "Law Office of Eric A. Jones, L.L.C." as the payee's address. *Ibid.* Gillie's affidavit stated that she believed that the letter was from the Attorney General and that Eric Jones "was someone from the Ohio Attorney General's Office," but that she was confused by the inclusion of the other names. J.A. 136; Pet. App. 26a.

The letter sent to respondent Hazel Meadows included a different version of the Ohio Attorney General's letterhead, containing the state seal with the designation "Office of the Ohio Attorney General, Collection Enforcement Section." Pet. App. 76a. That letter was signed by Sarah Sheriff of Wiles, Boyle, Burkholder & Bringardner Co., I.P.A., with the title of "Special Counsel to the Attorney General of the State of Ohio." *Ibid.* It is undisputed that the special counsel assigned to the Meadows debt was Mark Sheriff, not Sarah Sheriff. *Id.* at 78a, 97a. Meadows stated in an affidavit that "it was hard to tell" who had sent the letter to her because "the top of the letter * * * showed it was from the Ohio Attorney General's Office," but the envelope the letter came in indicated it was from the law firm. J.A. 139; Pet. App. 26a.

3. In March 2013, respondents filed this action against petitioners Eric Jones, Sarah Sheriff, Mark Sheriff, and their respective law firms, alleging that the use by Ohio's debt-collection special counsel of letterheads from the Office of the Attorney General (OAG) violated various prohibitions in 15 U.S.C. 1692e. Pet. App. 80a. In particular, plaintiffs alleged that use of the OAG letterhead "created a false impression that the OAG was the source of the letters," in violation of 15 U.S.C. 1692e(9), and that the letters used a name other than the "true name" of the debt collector's business or company, in violation of 15 U.S.C. 1692e(14). Pet. App. 80a. The Ohio Attorney General intervened in support of the attorneys and law firms. *Id.* at 27a, 81a.

The district court granted petitioners' motion for summary judgment. The court held that Ohio's spe-

cial counsel are "officer[s]" of the State within the meaning of 15 U.S.C. 1692a(6)(C) and therefore are excluded from the FDCPA's definition of "debt collector." Pet. App. 27a, 84a-90a. The district court also concluded that, even if the special counsel were "debt collector[s]" under the FDCPA, their use of OAG letterhead did not violate the Act because the letters "accurately reflect" special counsel's role "as representatives of the State of Ohio appointed by the OAG to collect debts owed to the State." *Id.* at 27a-28a, 91a-98a. The court explained that "[a]ny initial confusion" caused by the letterhead "is dispelled by special counsel's signature in which they identify themselves and their relationship to the OAG." *Id.* at 98a.

4. The court of appeals reversed. Pet. App. 18a-54a.

a. The court of appeals held that Ohio's special counsel do not qualify for the state-officer exemption from the FDCPA's definition of "debt collector" because they are not "officer[s]" as defined by the Dictionary Act, 1 U.S.C. 1. That statute defines "officer" to "include[] any person authorized by law to perform the duties of the office." *Ibid.* The court explained that the Ohio statutes authorizing the appointment of special counsel to collect debts owed to the State "do not authorize special counsel to fulfill the duties of any office." Pet. App. 31a; see *id.* at 31a-44a. On the contrary, the court reasoned, the relevant provision of state law "simply establishes the framework under which the Attorney General, within his or her discretion, may delegate the collection of debts to a third-party debt collector." *Id.* at 32a.

The court of appeals rejected petitioners' argument that special counsel qualify as officers because they

exercise a "sovereign power." Pet. App. 35a-36a. The court explained that the "authority to collect consumer debts is not a sovereign power" because it "can be exercised by any creditor." *Id.* at 35a. The court further held that, even if the Dictionary Act did not apply, Ohio's special counsel would not qualify as officers because they are "independent contractors" of the State. *Id.* at 38a.

On the merits of respondents' FDCPA claims, the court concluded that the dunning letters would violate the FDCPA if they contained a representation that "has the tendency to confuse the least sophisticated consumer." Pet. App. 48a. The court noted that the letters contained misrepresentations "in a technical sense" because the Attorney General's name in the letterhead was "not the true name of any Defendant" and because "Sarah Sheriff is not a special counsel." *Ibid.* The court concluded, however, that each letter, when read as a whole, may have "clarif[ied] the confusing impact of the letterhead for the least sophisticated consumer." *Id.* at 50a. Finding that question to be one "for the jury," *id.* at 51a, the court remanded the case for trial, *id.* at 54a.

b. Judge Sutton dissented. Pet. App. 55a-70a. Applying the Dictionary Act's definition of "officer," Judge Sutton would have held that Ohio's special counsel are "authorized by law" because Ohio Revised Code Ann. § 109.08 (LexisNexis 2014) "permits any action [special counsel] take when they invoke their attorney-general-given authority." Pet. App. 57a; *id.* at 56a-63a. He also concluded that special counsel fulfill the "duties of the office" because "[i]n their hands rests nothing less than a portion of the Attorney General's sovereign power to 'enforce' the civil

code the Ohio legislature has crafted." *Id.* at 57a. Relying on *Gregory* v. *Ashcroft*, 501 U.S. 452 (1991), Judge Sutton would have required a clear statement that Congress intended the FDCPA to cover these special counsel because doing so would amount to federal regulation of "core state functions." Pet. App. 58a.

Judge Sutton also would have held that no reasonable jury could find the special counsel's use of OAG letterhead to be materially misleading. Pet. App. 63a-70a. In his view, Ohio's special counsel are agents of the Attorney General, and "an agent who uses his principal's letterhead speaks the truth." *Id.* at 64a.

c. The court of appeals denied petitioners' petition for rehearing en banc. Pet. App. 1a. Judge Sutton, joined by four other judges, filed an opinion dissenting from the denial of rehearing. *Id.* at 7a-11a. Judge Clay filed an opinion concurring in the denial. *Id.* at 2a-7a.

SUMMARY OF ARGUMENT

I. Ohio's debt-collection special counsel are subject to the FDCPA because they fall within the Act's basic definition of "debt collector" and they are not state "officer[s]" exempt from the Act's requirements and prohibitions. Courts have traditionally determined whether an individual was a government "officer" by examining the nature, quality, and source of the individual's duties and authority. Ohio special counsel do not occupy any state "office," and they do not exercise any portion of the State's sovereignty. Rather, their duties are defined solely by contracts that expressly declare special counsel to be "independent contractor[s]." J.A. 173.

The FDCPA's structure and purposes reinforce the conclusion that Ohio's debt-collection special counsel are not state "officer[s]" within the meaning of Section 1692a(6)(C). The FDCPA draws a fundamental distinction, with respect to both private and governmental creditors, between a creditor's use of in-house personnel to collect debts owed to it and a creditor's retention of outside contractors to perform the same basic function. And for both private and governmental creditors, Congress has used the phrase "officer or employee" to describe the persons who may collect debts for the creditor without triggering the Act's requirements. See 15 U.S.C. 1692a(6)(A) and (C). If applied to private creditors under Section 1692a(6)(A), petitioners' expansive conception of "officer" would wholly subvert Congress's purposes, because it would exempt the very persons (independent contractors retained for debt-collection purposes) whom Congress principally sought to regulate. There is no basis for giving the same term different meanings in the two provisions.

Application of the FDCPA to Ohio's debt-collection special counsel does not intrude on Ohio's sovereignty. The State remains entirely free to use its own officers and employees to collect debts owed to it without triggering the FDCPA's coverage. And if a State retains private independent contractors to assist in those efforts (as Ohio has done), the only consequence is that those contractors must abide by the norms that apply to private debt collectors generally. Petitioners cite no decision of this Court suggesting that application of federal law to a State's independent contractors intrudes on state sovereignty or implicates any clear-statement rule.

II. In addition to its general prohibition of the use of a "false, deceptive, or misleading representation or means in connection with the collection of any debt," 15 U.S.C. 1692e, Section 1692e identifies 16 specific representations or practices as per se violations. Those include false representations that a document was issued by a state official, 15 U.S.C. 1692e(9), and "[t]he use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization," 15 U.S.C. 1692e(14). Because a reasonable jury could conclude that the letters at issue here violated one or both of those prohibitions, the court of appeals correctly reversed the district court's grant of summary judgment for petitioners.

Whether the letters at issue here were false, deceptive, or misleading should be judged from the perspective of an unsophisticated consumer (also referred to as the "least sophisticated consumer"). The Federal Trade Commission took that approach in enforcing the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, before Congress enacted the FDCPA in 1977. Particularly because the FDCPA contains congressional findings that prior laws had been inadequate to protect consumers against abusive debt-collection practices, the FDCPA should not be construed to adopt a standard that is less protective of consumers.

A reasonable jury could conclude that the use of Ohio Attorney General letterhead by debt-collection special counsel violated the FDCPA. Petitioners argue that use of the letterhead was not misleading because it accurately identified the entity (the Office of the Ohio Attorney General) for whom special counsel were performing debt-collection services. The

established function of a letterhead, however, is to identify the *sender* of a communication. Use of Ohio Attorney General letterhead therefore falsely implied that special counsel worked within that government office, when in fact they had been retained as independent contractors. And while petitioners contend that consumers would not care whether dunning letters were sent by a government official or a private contractor, Congress reached a different judgment. The FDCPA specifically prohibits false representations as to the source of debt-collection letters, as well as false representations that a communication was issued by a state official, and the Act draws a fundamental distinction between creditors' use of their own personnel to collect debts and similar efforts by third-party independent contractors.

ARGUMENT

The FDCPA reflects Congress's effort to protect consumers from "debt collection abuse by third party debt collectors." S. Rep. No. 382, 95th Cong., 1st Sess. 2 (1977) (Senate Report). "Unlike creditors, who generally are restrained by the desire to protect their good will when collecting past due accounts," third-party debt collectors may "have no future contact with the consumer and often are unconcerned with the consumer's opinion of them." *Ibid.* The FDCPA accordingly regulates the debt-collection activities of third-party contractors, but not the efforts of creditors to collect debts owed to themselves.

The FDCPA's fundamental distinction between creditors and third-party debt collectors is crucial to the proper resolution of both questions presented here. Because Ohio special counsel are not part of the State's government, but instead are retained as inde-

pendent contractors, they are subject to the FDCPA's requirements. A reasonable jury could conclude that, by creating the false impression that the letters were sent by public officials, those special counsel violated the Act. The judgment of the court of appeals therefore should be affirmed.

I. OHIO'S DEBT-COLLECTION SPECIAL COUNSEL ARE "DEBT COLLECTOR[S]" SUBJECT TO THE FDCPA'S REQUIREMENTS AND PROHIBITIONS

Subject to enumerated exceptions, the FDCPA defines the term "debt collector" to include any person "who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." 15 U.S.C. 1692a(6). Petitioners do not dispute that this language encompasses Ohio debt-collection special counsel. Petitioners rely instead on Section 1692a(6)(C), which states that the term "debt collector" does not include "any officer or employee of * * * any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties." 15 U.S.C. 1692a(6)(C). Petitioners are incorrect. Because Ohio's debt-collection special counsel are not part of the state government, but instead are third-party debt collectors hired as independent contractors, they are subject to the FDCPA's requirements and prohibitions.

A. Ohio's Debt-Collection Special Counsel Are Not State "Officer[s]" Within The Meaning Of Section 1692a(6)(C)

1. Although the FDCPA does not define the term "officer," the Dictionary Act states that, "unless the context indicates otherwise," the term "'officer' includes any person authorized by law to perform the

duties of the office." 1 U.S.C. 1. The Dictionary Act does not specify what qualifies as an "office" for purposes of that definition or what it means for a person to be "authorized by law" to perform certain duties. To give meaning and context to those concepts, the Court should look to the common law's definition of public "office" and "officer" because, "[w]here Congress uses terms that have accumulated settled meaning under . . . the common law, a court must infer, unless the statute otherwise dictates, that Congress means to incorporate the established meaning of these terms." *Neder* v. *United States*, 527 U.S. 1, 21 (1999) (citations omitted; brackets in original).

2. At common law, courts determined whether an individual was a government officer—as opposed to a government employee or an independent contractor—by examining the nature, quality, and source of the individual's duties and authority. See, *e.g.*, *United States* v. *Germaine*, 99 U.S. (9 Otto) 508, 511 (1879) (examining the "nature of [the individual's] employment" to conclude that "he is not an officer"); *State ex rel. Landis* v. *Board of Comm'rs of Butler Cnty.*, 115 N.E. 919, 919-920 (Ohio 1917) (examining the "quality" and source of the individual's duties to determine that he was not an officer); *State ex rel. Newman* v. *Skinner*, 191 N.E. 127, 128 (Ohio 1934) (same). The term "office" generally "embraces the ideas of tenure, duration, emolument, and duties." *United States* v. *Hartwell*, 73 U.S. (6 Wall.) 385, 393 (1868); see *Hall* v. *Wisconsin*, 103 (13 Otto) U.S. 5, 9 (1880); *Metcalf & Eddy* v. *Mitchell*, 269 U.S. 514, 520 (1926). The term typically refers to a position that is defined or prescribed by law rather than by contract, *Metcalf & Eddy*, 269 U.S. at 520; with fixed compensation, *Hall*,

103 U.S. (13 Otto) at 9; *Germaine*, 99 U.S. (9 Otto) at 512; and with duties that are permanent and continuing even when the office-holder changes, *Germaine*, 99 U.S. (9 Otto) at 512; see *United States* v. *Maurice*, 26 F. Cas. 1211, 1214 (C.C.D. Va. 1823) (No. 15,747) (Marshall, C.J.); *State* v. *Wilson*, 29 Ohio St. 347, 349 (1876).

A leading 19th Century treatise on public officers explained:

> A public office is the right, authority and duty, created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public. The individual so invested is a public officer.

Floyd R. Mechem, *A Treatise on the Law of Public Offices and Officers* § 1, at 1-2 (1890) (Mechem) (footnotes omitted). As the Supreme Court of Maine observed in one influential opinion, "the term 'office' implies a delegation of a portion of the sovereign power to, and possession of it by the person filling the office." *Opinion of the Justices*, 3 Greenl. (Me.) 481, 482 (1822). An individual is considered to exercise a delegated portion of the sovereign power when his authority is granted by law and the exercise of that authority binds third parties or the government without the need for additional authorization by the individual's principal. *Id.* at 482; *State* v. *Jennings*, 49 N.E. 404, 405-406 (Ohio 1898) ("[P]rominence is given to the fact that a public officer is one who exercises, in an independent capacity, a public function, in the interest of the people, by virtue of law, which is only

saying, in another form, that he exercises a portion of the sovereignty of the people delegated to him by law."). This Court explained in *Germaine*, for example, that a "pensions surgeon" was not an officer of the United States because the nature of his duties made him merely the "agent of the [C]ommissioner" of Pensions, appointed "to procure information needed to aid in the performance of [the Commissioner's] own official duties" rather than appointed to carry out his own independent functions. 99 U.S. (9 Otto) at 512.

Common-law courts and relevant secondary sources have frequently contrasted public officers, whose duties are defined and conferred by law, with independent contractors, whose duties are defined and conferred by contract. The Mechem treatise explained that "[a] public office * * * is never conferred by contract, but finds its source and limitations in some act or expression of the governmental power." Mechem § 5, at 5. This Court echoed those sentiments in *Hartwell*, explaining that "[a] government office is different from a government contract," both because "[t]he latter from its nature is necessarily limited in its duration and specific in its objects" and because the contract "terms agreed upon define the rights and obligations of both parties, and neither may depart from them without the assent of the other." 73 U.S. (6 Wall.) at 393.

The Court in *Metcalf & Eddy* similarly held that consulting engineers were independent contractors, not officers, because "[t]heir duties were prescribed by their contracts and it does not appear to what extent, if at all, they were defined or prescribed by statute." 269 U.S. at 520. Summarizing the characteristics that distinguish an officer from an independent

contractor, Chief Justice Marshall (riding circuit) explained:

> But if a duty be a continuing one, which is defined by rules prescribed by the government, and not by contract, which an individual is appointed by government to perform, who enters on the duties appertaining to his station, without any contract defining them, if those duties continue, though the person be changed; it seems very difficult to distinguish such a charge or employment from an office, or the person who performs the duties from an officer.

Maurice, 26 F. Cas. at 1214.[1]

3. Under the approach described above, Ohio's debt-collection special counsel are not state officers because they do not hold positions that "embrace[] the ideas of tenure, duration, emolument, and duties." *Hartwell*, 73 U.S. (6 Wall.) at 393.

a. Ohio's debt-collection special counsel serve for a period of time that is established solely by contract and is terminable at the will of the Attorney General. J.A. 171, 185-186. Ohio law leaves the decision whether to appoint any special counsel at all, or whether to replace a special counsel whose contract is terminated, entirely to the discretion of the State's Attorney General. See Ohio Rev. Code Ann. § 109.08 (LexisNexis 2014). The compensation scheme for Ohio special counsel also differs from the "emolument" usually

---

[1] Ohio law is to the same effect. See, *e.g.*, *Fuldauer* v. *City of Cleveland*, 290 N.E.2d 546, 551 (Ohio 1972) ("[A] public officer or employee holds his office or position as a matter of law and not of contract."); see also Wilson, 29 Ohio St. at 349 (same); *Board of Comm'rs of Butler Cty.*, 115 N.E. at 919 (same).

associated with government officers because it is established by contract and is not "fixed by law." *Hartwell*, 73 U.S. (6 Wall.) at 393; see *Metcalf & Eddy*, 269 U.S. at 520; *Hall*, 103 U.S. (13 Otto) at 9; see also *Scofield* v. *Strain*, 51 N.E. 1012, 1015 (Ohio 1943). Ohio Revised Code § 109.08 provides that "special counsel shall be paid for their services from funds collected by them in an amount approved by the Attorney General," and the Retention Agreement states that each special counsel will receive defined percentages of the amounts he collects. J.A. 180-183.

b. Ohio's debt-collection special counsel are not "authorized by law to perform the duties of [any] office," 1 U.S.C. 1, and they do not exercise delegated sovereign authority.

The Ohio legislature has authorized the State's Attorney General to "appoint" private lawyers for the purpose of collecting debts owed to the State of Ohio. See Ohio Rev. Code Ann. § 109.08 (LexisNexis 2014); Pet. Br. 27-28; Pet. App. 57a (Sutton, J., dissenting). The term "office," however, has traditionally been understood to "embrace[] the idea of * * * duties fixed by law," and "[t]he term 'officer' is one inseparably connected with an office." *Metcalf & Eddy*, 269 U.S. at 520. A contract for performance of services is not sufficient to create an "office," even when "entered into by authority of law and prescribing [the individuals'] duties." *Ibid.* Where a position "lack[s] * * * the essential elements of a public station, permanent in character, created by law, whose incidents and duties were prescribed by law," the individuals holding the position are "in the position of independent contractors." *Ibid.*

Ohio Revised Code § 109.08 authorizes the State's Attorney General to hire outside attorneys to assist in a particular subset of the duties assigned to the Office of the Attorney General. But the statute does not create an "office of special counsel" and does not specify the range of duties that any particular individual hired as a special counsel is entitled to perform. Nor does it confer governmental authority upon any particular individual hired as a special counsel. Rather, as the court of appeals explained, "Section 109.08 simply establishes the framework under which the Attorney General, within his or her discretion, may delegate the collection of debts to a third-party debt collector." Pet. App. 32a.

c. Even assuming, *arguendo*, that Section 109.08 would have authorized the Ohio Attorney General to take further steps to create positions having the characteristics of government "offices," the Attorney General has not done so. To the contrary, in the Retention Agreement used to hire special counsel, the Attorney General retains complete discretion to decide which debts, if any, a particular special counsel may pursue. J.A. 171, 173-174. Special counsel are not authorized to settle any claim or to initiate litigation on behalf of the State with respect to any claim without first obtaining "the prior approval of the Attorney General." J.A. 179.

The Retention Agreement specifies, moreover, that "Special Counsel will render services pursuant to this appointment as an independent contractor. No Special Counsel, whether for purpose of applications of Ohio Revised Code Chapter 102, R.C. 9.86 or 9.07 or for any other purpose, shall be regarded as in the employment of, or as an employee of, the Attorney

General or the State Clients." J.A. 173. The Ohio Revised Code provisions that the Retention Agreement declares to be inapplicable address indemnification of state officers and employees. Rather than providing that the State will indemnify special counsel, the contract requires special counsel to indemnify the Attorney General and the State of Ohio for "any and all claims for injury or damages arising from this Retention Agreement that are attributable to Special Counsel's own actions." J.A. 190. The Retention Agreement thus reflects the Attorney General's clear intent to *disclaim* any inference that appointed special counsel are part of the State's government.

Special counsel are similar to the "pensions surgeons" that the Court in *Germaine* found not to be officers. 99 U.S. (9 Otto) at 511-512. Like Ohio Revised Code § 109.08, a federal statute authorized a government officer (the Commissioner of Pensions) "to appoint" pensions surgeons to perform certain tasks delegated to the surgeons at the principal's discretion. 99 U.S. (9 Otto) at 508 (citing Act of Mar. 3, 1873, ch. 234, § 35, 17 Stat. 576). The Commissioner of Pensions, like the Ohio Attorney General, was authorized to "appoint one or a dozen persons to do the same thing." *Id.* at 512. And like Ohio's debt-collection special counsel, the pensions surgeon in *Germaine* had duties that were "occasional and intermittent" and were designed "to aid in the performance of [the principal's] own official duties." *Ibid.*

Ohio's debt-collection special counsel also have been delegated no portion of Ohio's sovereignty. They are not authorized by law, or even by contract, to undertake any independent action that will bind a third party, the Ohio Attorney General, or the State of

Ohio. See, *e.g.*, Mechem § 4, at 5; *Opinion of the Justices*, 3 Greenl. (Me.) at 482; *Germaine*, 99 U.S. (9 Otto) at 512; p. 18, *supra*. As explained above, special counsel must confer with the Attorney General's office and "receive the prior approval of the Attorney General" before settling any claim or initiating litigation. J.A. 179. Although special counsel undoubtedly assist the Office of the Attorney General in pursuing debts owed to the State, they do not exercise any sovereign authority in doing so and therefore cannot properly be considered "officers."[2]

B. The Structure And Purposes Of The FDCPA Confirm That Ohio's Special Counsel Are Not State "Officers" Within The Meaning Of Section 1692a(6)(C)

Petitioners identify no sound reason to construe the term "officer" in Section 1692a(6)(C) as sweeping

---

[2] A different analysis may sometimes be required to determine whether an individual is excluded from the FDCPA's definition of "debt collector" as an "employee" of the creditor. Staff of the FTC previously stated that the creditor "employee[s]" excluded under Section 1692e(6)(A) could include a "*de facto* employee" who "works for a creditor to collect in the creditor's name at the creditor's office under the creditor's supervision." 53 Fed. Reg. 50,097, 50,102 (Dec. 13, 1988). In a subsequent letter, FTC staff stated that the "*de facto* employee" concept does not "encompass broader categories, such as the creditor's representatives or agents," but only those collection-agency employees who are "treated essentially the same as creditor employees." Letter from Thomas E. Kane, Attorney, Division of Financial Practices, FTC, to Richard T. de Mayo, Esq. (May 23, 2002), at 2-3. The CFPB, which is the first agency with general rulemaking authority under the FDCPA, has not addressed this rationale. No question concerning the proper application of the "de facto employee" concept is presented here, because petitioners do not argue that Ohio's debt-collection special counsel are "employee[s]" of the State within the meaning of Section 1692a(6)(C).

beyond the established common-law understanding to encompass individuals, like Ohio special counsel, who are retained as independent contractors rather than made part of the state government. To the contrary, the FDCPA's structure and purposes reinforce the conclusion that such independent contractors are not state "officer[s]" within the meaning of Section 1692a(6)(C).

The distinction between a creditor's use of in-house personnel to collect debts and its hiring of third-party debt collectors is fundamental to the FDCPA's operation. In addition to the exemption for state officers and employees that is at issue in this case, a separate provision exempts from the FDCPA's coverage "any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor." 15 U.S.C. 1692a(6)(A). That provision ensures that private creditors, like state governments, can use their own personnel to collect debts owed to them without becoming subject to the FDCPA.

A reading of Section 1692a(6)(A) that encompassed debt collectors retained as independent contractors would wholly subvert Congress's purposes. If such contractors were treated as "officers" of a private creditor, simply because they had been retained by the creditor to assist in its debt-collection activities, Section 1692a(6)(A) would exempt from the FDCPA's coverage the very persons whom Congress primarily sought to regulate. See Senate Report 3 ("The primary persons intended to be covered [by the Act] are independent debt collectors."); see *id.* at 2 ("The committee has found that debt collection abuse by third party debt collectors is a widespread and serious national problem.").

Petitioners' argument thus depends on the view that, although Congress used the phrase "officer or employee" in both Section 1692a(6)(A) and Section 1692a(6)(C), it intended the word "officer" to encompass independent contractors in the second provision but not in the first. That approach flouts bedrock principles of statutory construction. "Generally, 'identical words used in different parts of the same statute are . . . presumed to have the same meaning.'" *Robers* v. *United States*, 134 S. Ct. 1854, 1857 (2014) (quoting *Merrill Lynch, Pierce, Fenner & Smith Inc.* v. *Dabit*, 547 U.S. 71, 86 (2006)). That interpretive canon has particular force here, because the two provisions appear close together within a list of exemptions from the FDCPA's definition of "debt collector."

If Congress had wished to adopt the broad exemption that petitioners advocate, it could easily have drafted Section 1692a(6)(C) to encompass "any person authorized to collect a debt owed to a State or state agency." Congress's decision instead to use in Section 1692a(6)(C) the same phrase ("officer or employee") that it used in Section 1692a(6)(A) makes clear that Congress intended the collection of debts owed to States to be subject to the same basic FDCPA regime that governs collection of debts owed to private creditors. Both private and governmental creditors may use in-house personnel to collect debts without triggering the Act's coverage. But when either type of creditor elects to hire an outside attorney to engage in debt collection as an independent contractor, those contractors must comply with the Act.

C. Application Of The FDCPA To Ohio's Debt-Collection Special Counsel Does Not Intrude On Ohio's Sovereign Interests

Petitioners argue (Br. 1-3, 19-22, 27-30) that Ohio's debt-collection special counsel should be treated as state "officer[s]" within the meaning of Section 1692a(6)(C) to avoid impairment of the State's sovereign function of collecting money owed to it. See Pet. App. 58a (Sutton, J., dissenting) ("Special counsel [are] hired to perform core sovereign functions" "concerning the People's money."). The collection of debts owed to a State is undoubtedly essential to the State's financial soundness and thus to its effective operations. Petitioners identify no sound basis for concluding, however, that application of the FDCPA to Ohio special counsel will impede that function or otherwise impair the State's sovereign dignity.

Petitioners argue (Br. 24, 34) that States have a sovereign interest in determining their structure of government and the appropriate division of authority within that structure. But the FDCPA leaves the States entirely free to designate their own officers and employees to collect debts owed to them. If a State chooses that approach, the FDCPA is inapplicable to its collection efforts. Provisions like Section 1692a(6)(C), which exempts state officers and employees from the FDCPA, are a traditional means by which Congress seeks to preserve intergovernmental comity and to avoid unnecessary interference with the operation of state governments.

The FDCPA likewise leaves Ohio free to contract with persons outside the government for assistance in collecting debts owed to the State. The consequence of that decision, however, is that those private con-

tractors (although not the State itself) may be held liable under the FDCPA if they violate the norms that apply to private third-party debt collectors generally. The Retention Agreement between the Ohio Attorney General and special counsel directs that "Special Counsel must comply with the same standards of behavior as set forth in," *inter alia*, the FDCPA. J.A. 194. Thus, while the Ohio Attorney General opposes a legal rule that would subject special counsel to *liability* under the FDCPA, he evidently does not view the Act's substantive requirements as inconsistent with effective debt collection. More fundamentally, petitioners cite no decision of this Court suggesting that application of federal law to a State's independent contractors intrudes on state sovereignty or triggers any clear-statement rule.

Petitioners' reliance (Br. 24, 30) on *Gregory* v. *Ashcroft*, 501 U.S. 452 (1991), is particularly misplaced. *Gregory* presented the question whether the Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C. 621 *et seq.*, overrode a Missouri constitutional provision that imposed a mandatory retirement age on the justices of its state supreme court. 501 U.S. at 455. The Court observed that the policy judgment reflected in the Missouri retirement-age provision was "a decision of the most fundamental sort for a sovereign entity" because "[t]hrough the structure of its government, and the character of those who exercise government authority, a State defines itself as a sovereign." *Id.* at 460. Absent an unambiguous statement of congressional intent to countermand the State's judgment, the Court declined to read the ADEA to dictate that result. *Id.* at 460-467.

In this case, by contrast, Ohio officials have declared debt-collection special counsel to be independent contractors, and the State has chosen *not* to vest those special counsel with governmental power. Nothing in *Gregory* suggests that application of the FDCPA is disfavored in these circumstances simply because Ohio special counsel provide useful practical assistance in the performance of an important state function. In that regard, special counsel are not meaningfully different from many other individuals (*e.g.*, truck drivers or construction workers) who are employed by private companies but occasionally perform work pursuant to contracts with the State. Application of federal law to such persons has not traditionally been thought to impair state sovereign prerogatives.

Petitioners' emphasis on the State's sovereign interest in collecting debts owed to it is flawed in another respect as well. Section 1692a(6)(C) exempts from the FDCPA's definition of "debt collector" any state officer or employee "to the extent that collecting or attempting to collect any debt is in the performance of his official duties." Although Section 1692a(6)(C) encompasses state officers and employees who collect debts owed to the State itself, it is not limited to such persons. Rather, Section 1692a(6)(C) also exempts from the FDCPA's definition of "debt collector" any state officer or employee who is tasked by state law with collecting debts owed to private persons. Cf. Senate Report 3 (noting that Congress did not intend the FDCPA to cover "marshals and sheriffs, while in the conduct of their official duty" or "process servers"). That aspect of Section 1692a(6)(C) highlights Congress's decision to make the exemption turn on an

individual's status as a state "officer or employee"—*i.e.*, as part of the state government—rather than on the identity of the creditor to whom the debt is owed.

II. A REASONABLE JURY COULD CONCLUDE THAT OHIO'S DEBT-COLLECTION SPECIAL COUNSEL VIOLATED THE FDCPA BY USING THE LETTERHEAD OF THE OFFICE OF THE ATTORNEY GENERAL

Petitioners argue that, as a matter of law, the use by Ohio's debt-collection special counsel of the Ohio Attorney General's letterhead in communications with debtors cannot constitute a violation of the FDCPA. The court of appeals correctly rejected that contention.

The FDCPA provides, *inter alia*, that "[a] debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt." 15 U.S.C. 1692e. In addition to that general prohibition, Section 1692e includes a non-exhaustive list of 16 specific representations or practices that are per se violations. Two such practices are relevant here:

> (9) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization or approval.
>
> * * *
>
> (14) The use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization.

15 U.S.C. 1692e(9) and (14). In light of Section 1692e's general and specific prohibitions, the court of appeals correctly held that a reasonable jury could find the use by Ohio's debt-collection special counsel of letterhead from the Office of the Attorney General to be a violation of the FDCPA.

A. Whether A Debt-Collection Practice Is False, Deceptive, Or Misleading Should Be Judged From The Perspective Of An Unsophisticated Consumer

The FDCPA does not specify from whose perspective a judge or jury should assess whether a particular debt-collection practice is deceptive, is misleading, or creates a false impression. Every court of appeals to consider the question has adopted an "unsophisticated consumer" test (also known as a "least sophisticated consumer" test). *Pollard* v. *Law Office of Mandy L. Spaulding*, 766 F.3d 98, 103 & n.4 (1st Cir. 2014); *Eades* v. *Kennedy, PC Law Offices*, 799 F.3d 161, 173 (2d Cir. 2015); *Jensen* v. *Pressler & Pressler*, 791 F.3d 413, 418 (3d Cir. 2015); *Russell* v. *Absolute Collection Servs., Inc.*, 763 F.3d 385, 395 (4th Cir. 2014); *Goswami* v. *American Collections Enter., Inc.*, 377 F.3d 488, 495 (5th Cir. 2004), cert. denied, 546 U.S. 811 (2005); Pet. App. 46a-48a; *Gammon* v. *GC Servs. Ltd. P'ship*, 27 F.3d 1254, 1257 (7th Cir. 1994); *Peters* v. *General Serv. Bureau, Inc.*, 277 F.3d 1051, 1055 (8th Cir. 2002); *Donohoe* v. *Quick Collect, Inc.*, 592 F.3d 1027, 1033 (9th Cir. 2010); *Fouts* v. *Express Recovery Servs., Inc.*, 602 Fed. Appx. 417, 421 (10th Cir. 2015); *Miljkovic* v. *Shafritz & Dinkin, P.A.*, 791 F.3d 1291, 1306 (11th Cir. 2015).[3]

---

[3] Courts of appeals agree that there is no practical difference between the "unsophisticated consumer" and "least sophisticated

Petitioners urge the Court to adopt a test that would examine debt-collection practices from the perspective of "the average consumer who has defaulted on a debt." Br. 41. Petitioners do not explain how, as a practical matter, such a test would differ from an unsophisticated-consumer test. No court of appeals has adopted petitioners' formulation, and there is no reason for this Court to do so. Rather, the established focus on the likely reactions of reasonable but unsophisticated consumers best serves the intent of the Congress that enacted the FDCPA.

Before the FDCPA's enactment in 1977, the Federal Trade Commission (FTC or Commission) monitored debt collectors under Section 5 of the Federal Trade Commission Act (FTC Act), 15 U.S.C. 45, which prohibits unfair or deceptive acts or practices in or affecting commerce. By the time the FDCPA was enacted, the Commission had recognized that its "duty" under the FTC Act was "to protect the 'gullible and credulous as well as the cautious and knowledgeable.'" *In re Slough*, 70 F.T.C. 1318, 1355 (1966) (citation omitted), enforced, *Slough* v. *FTC*, 396 F.2d 870 (5th Cir. 1968), cert. denied, 393 U.S. 980 (1968). In upholding an FTC finding that an advertising practice was unfair, false, and misleading, this Court admonished that "[l]aws are made to protect the trusting as well as the suspicious." *FTC* v. *Standard Educ. Soc'y*, 302 U.S. 112, 116 (1937). Lower courts reviewing similar FTC findings held that, "[i]n evaluating the tendency of language to deceive, the Commission should look not to the most sophisticated readers but rather to the least." *Exposition Press, Inc.* v. *FTC*,

---

consumer" standards. See, *e.g.*, *Pollard*, 766 F.3d at 103 n.4; *Jensen*, 791 F.3d at 419 n.3.

295 F.2d 869, 872 (2d Cir. 1961), cert. denied, 370 U.S. 917 (1962).

The FDCPA contains congressional findings that "[e]xisting laws and procedures for redressing * * * injuries" caused by "abusive, deceptive, and unfair debt collection practices" were "inadequate to protect consumers." 15 U.S.C. 1692(a) and (b). Based in part on those statutory findings, courts of appeals have correctly inferred that Congress did not intend to adopt an FDCPA standard less protective of consumers than the standard previously applied under the FTC Act. *Jeter* v. *Credit Bureau, Inc.*, 760 F.2d 1168, 1173-1174 (11th Cir. 1985) ("It would be anomalous for the Congress, in light of its belief that existing state and federal law was inadequate to protect consumers, to have intended that the legal standard under the FDCPA be *less* protective of consumers than under the existing 'inadequate' legislation."); see *Baker* v. *G.C. Servs. Corp.*, 677 F.2d 775, 778 (9th Cir. 1982) (adopting least-sophisticated-consumer standard from FTC's analysis of deceptive-advertising claims).

As applied by courts of appeals in FDCPA cases, the unsophisticated-consumer standard is an objective standard that incorporates an element of reasonableness. The standard is designed to protect "'consumers of below-average sophistication or intelligence' who are 'especially vulnerable to fraudulent schemes,'" *Gammon*, 27 F.3d at 1257 (quoting *Clomon* v. *Jackson*, 988 F.2d 1314, 1319 (2d Cir. 1993)), but it "prevents liability for bizarre or idiosyncratic interpretations of collection notices by preserving a quotient of reasonableness and presuming a basic level of understanding and willingness to read with care," *Wilson* v. *Quadramed Corp.*, 225 F.3d 350, 354-355 (3d

Cir. 2000) (citation omitted). Courts thus consider whether a hypothetical unsophisticated consumer who is not inclined to bizarre or idiosyncratic interpretations would be confused or misled by a debt collector's communication. *McKinney* v. *Cadleway Props., Inc.*, 548 F.3d 496, 503 (7th Cir. 2008); see *McMahon* v. *LVNV Funding, LLC*, 744 F.3d 1010, 1019 (7th Cir. 2014) (considering perspective of person of modest education and limited commercial savvy).

B. Because A Reasonable Jury Could Find That Ohio's Debt-Collection Special Counsel Violated The FDCPA, The Court Of Appeals Correctly Reversed The District Court's Award Of Summary Judgment For Petitioners

Like any standard that refers to a reasonable person or a reasonable consumer, the "reasonable unsophisticated consumer" standard is suitable for application by a properly instructed jury (or by a judge as factfinder in a bench trial). See *Hana Fin., Inc.* v. *Hana Bank*, 135 S. Ct. 907, 911 (2015). In this case, petitioners and respondents both argued to the court of appeals that they were entitled to summary judgment on respondents' claim that an unsophisticated consumer would be misled by special counsel's use of the Attorney General's letterhead. The court rejected both arguments, holding instead that a jury should decide whether special counsel's use of the letterhead violated the FDCPA. Pet. App. 54a. Because respondents did not file a petition or cross-petition for a writ of certiorari, the only question before this Court is whether the court of appeals erred in denying petitioners' request for entry of summary judgment. The

court of appeals' ruling on that question should be affirmed.[4]

1. The FDCPA prohibits "[t]he use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization." 15 U.S.C. 1692e(14). Although that prohibition is not limited to circumstances where a third-party debt collector misrepresents itself to be the creditor, it has particular salience in that context. A third-party debt collector is subject to the FDCPA's requirements precisely *because he is not the creditor*. But while that distinction is fundamental to the FDCPA, it can be confusing for the debtor. Although the consumer typically has a pre-existing relationship with the original creditor, he is unlikely to know or be familiar with a third-party debt collector. To minimize the possibility of confusion, Congress not only prohibited misrepresentations as to source, but affirmatively required debt collectors to disclose in *every* communication with a debtor "that the communication is from a debt collector." 15 U.S.C. 1692e(11).

---

[4] Some circuits have suggested that the district court can always determine, as a matter of law, whether particular language in a debt-collection letter violates the FDCPA. See, *e.g.*, *Wilson*, 225 F.3d at 353 n.2. That is incorrect. This Court "ha[s] long recognized across a variety of doctrinal contexts that, when the relevant question is how an ordinary person or community would make an assessment, the jury is generally the decisionmaker that ought to provide the fact-intensive answer." *Hana Fin.*, 135 S. Ct. at 911. Even when a jury trial has been requested, however, the district court may determine, on a motion for summary judgment or for judgment as a matter of law, whether a reasonable jury could find for the non-moving party on the question whether a particular communication violates Section 1692e. See *ibid.*

Of course, a debt collector's communication may include the name of its client to the extent it identifies for the debtor "the name of the creditor to whom the debt is owed." 15 U.S.C. 1692g(a)(2) (requiring debt collector to inform the consumer of the name of the creditor in the debt collector's initial communication with the consumer). But a debt collector's use of the creditor's name to suggest that the creditor is the actual sender of the letter is prohibited by Section 1692e(14).[5] Blurring the line between sender and represented party is especially problematic when the creditor is a government entity because Section 1692e(9) separately prohibits the use of any communication that falsely suggests that the communication was "issued * * * by any * * * official * * * of * * * any State." 15 U.S.C. 1692e(9).

2. Petitioners principally argue (Br. 46) that special counsel's use of the Attorney General's letterhead accurately conveyed that the letters were "sent on behalf of the organization identified (the Attorney General's Office) by the individuals listed in the signature block (special counsel)." That argument rests on the premise that, when the sender of a letter acts in a representative capacity, the accepted function of a letterhead is to identify the organization "on behalf of" which the letter is sent—*i.e.*, the client rather than the representative. That is not so. By convention, the established function of a letterhead is to identify the *sender* of the letter. When a communication uses the letterhead of an office or organization (including a law firm), it implies that the individual sender of the letter

---

[5] Conversely, 15 U.S.C. 1692j makes it unlawful for a creditor to give a consumer the false impression that the creditor has hired a third-party debt collector.

is a member or employee of the organization, not that the individual has been retained as an outside contractor to represent the organization.

Petitioners are also wrong in arguing (Br. 47) that, notwithstanding special counsel's use of the Ohio Attorney General's letterhead, the name of the special counsel in the signature block dispels any possible misconception about the sender's identity and status. Petitioner Jones's letter identified him as "Outside Counsel for the Attorney General's Office," Pet. App. 14a, and petitioner Sarah Sheriff's letter identified her (incorrectly) as "Special Counsel for the Attorney General for the State of Ohio," *id.* at 17a. Neither letter states explicitly that the sender is a third-party independent contractor rather than a government officer or employee, and there is no basis for assuming that a reasonable unsophisticated consumer would understand the terms "Outside Counsel" and "Special Counsel" to dispel the inference that the Ohio Attorney General letterhead would otherwise create.

Indeed, petitioners have argued throughout this litigation, including in this Court, that debt-collection special counsel *are* "officers" of the State of Ohio, at least for purposes of Section 1692a(6)(C). It therefore is unsurprising that the letters sent by special counsel conveyed that impression. At a minimum, a reasonable jury could conclude, based on its assessment of the inferences that a reasonable unsophisticated consumer could draw, that the letters violated Section 1692(e)(9) and/or Section 1692(e)(14).

3. Petitioners argue that Section 1692e contains a "materiality element" such that the provision bars only communications "concern[ing] matters that could affect a debtor's decisionmaking." Br. 43; see Br. 43-

44. As explained above, Section 1692e contains a non-exhaustive list of 16 types of false representations or omissions that constitute violations of that provision. To determine whether a particular communication violates one of those prohibitions, a jury or judge must assess how a reasonable unsophisticated consumer would *understand* the communication—not what actions the consumer would likely take in response. To be sure, the enumeration of those categories presumably reflects the enacting Congress's belief that, as a general matter, the prohibited practices have a natural tendency to influence debtors' decisionmaking. If a particular communication is determined to fall within one of the enumerated categories, however, the statute does not contemplate any further inquiry into the likelihood that the specific communication would alter any decision of either the actual recipient or the reasonable unsophisticated consumer.

Petitioners suggest (Br. 51) that it does not "matter to consumers" whether letters like those at issue here are sent by state officials or by independent contractors. Congress, however, has made a different judgment, because the FDCPA specifically prohibits false representations as to the source of dunning letters, as well as false representations that a communication was issued by a state official. Those prohibitions appear, moreover, within a statute that draws a fundamental distinction between creditors' efforts to collect debts through their *own* personnel and creditors' use of independent contractors as third-party debt collectors. Because petitioners' letters could have given a reasonable unsophisticated consumer the false impression that the letters were sent by the Office of the Ohio Attorney General, the court of ap-

peals correctly reversed the district court's award of summary judgment for petitioners.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

DONALD B. VERRILLI, JR.
Solicitor General
MALCOLM L. STEWART
Deputy Solicitor General
SARAH E. HARRINGTON
Assistant to the Solicitor General

MARY MCLEOD
General Counsel
TO-QUYEN TRUONG
Deputy General Counsel
JOHN R. COLEMAN
Assistant General Counsel
NANDAN M. JOSHI
LAWRENCE DEMILLE-WAGMAN
Counsel
Consumer Financial Protection Bureau

MARCH 2016

APPENDIX

1. 15 U.S.C. 1692 provides:

Congressional findings and declaration of purpose

(a) Abusive practices

There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.

(b) Inadequacy of laws

Existing laws and procedures for redressing these injuries are inadequate to protect consumers.

(c) Available non-abusive collection methods

Means other than misrepresentation or other abusive debt collection practices are available for the effective collection of debts.

(d) Interstate commerce

Abusive debt collection practices are carried on to a substantial extent in interstate commerce and through means and instrumentalities of such commerce. Even where abusive debt collection practices are purely intrastate in character, they nevertheless directly affect interstate commerce.

(e) Purposes

It is the purpose of this subchapter to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.

2. 15 U.S.C. 1692a provides in pertinent part:

Definitions

As used in this subchapter—

* * * * *

(6) The term "debt collector" means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. For the purpose of section 1692f(6) or this title, such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests. The terms does not include—

(A) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

(B) any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;

(C) any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties;

(D) any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;

(E) any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; and

(F) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; (ii) concerns a debt which was originated by such person; (iii) concerns a debt which was not in default at the time it was obtained by such person; or (iv) concerns a debt obtained by such person as a se-

cured party in a commercial credit transaction involving the creditor.

* * * * *

3. 15 U.S.C. 1692e provides:

False or misleading representations

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or facsimile thereof.

(2) The false representation of—

(A) the character, amount, or legal status of any debt; or

(B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.

(3) The false representation or implication that any individual is an attorney or that any communication is from an attorney.

(4) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages

of any person unless such action is lawful and the debt collector or creditor intends to take such action.

(5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

(6) The false representation or implication that a sale, referral, or other transfer or any interest in a debt shall cause the consumer to—

(A) lose any claim or defense to payment of the debt; or

(B) become subject to any practice prohibited by this subchapter.

(7) The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer.

(8) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.

(9) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval.

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

(11) The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.

(12) The false representation or implication that accounts have been turned over to innocent purchasers for value.

(13) The false representation or implication that documents are legal process.

(14) The use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization.

(15) The false representation or implication that documents are not legal process forms or do not require action by the consumer.

(16) The false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by section 1681a(f) of this title.

4. 15 U.S.C. 1692j provides:

Furnishing certain deceptive forms

(a) It is unlawful to design, compile, and furnish any form knowing that such form would be used to create the false belief in a consumer that a person other than the creditor of such consumer is participating in the collection of or in an attempt to collect a debt such consumer allegedly owes such creditor, when in fact such person is not so participating.

(b) Any person who violates this section shall be liable to the same extent and in the same manner as a debt collector is liable under section 1692k of this title for failure to comply with a provision of this subchapter.